

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

Plaintiff,	,)	
)	
v.)	CAUSE NO.:
)	
Defendant.	,)	
)	

FINAL JURY INSTRUCTIONS OF THE COURT
NUMBERED 1 THROUGH []

The following jury instructions numbered 1 through _____, inclusive, will be read by the Court to the Jury at the conclusion of all the evidence and after the closing arguments of parties' counsel pursuant to Federal Rule of Civil Procedure 51, on _____.

Date: []

Paul R. Cherry
Magistrate Judge
United States District Court
Northern District of Indiana

Court's Final Jury Instruction

Now that you have heard the evidence and the argument, I will instruct you about the applicable law. It is your duty to follow the law as I will state it and to apply it to the facts as you find them from the evidence in the case. Do not single out any one instruction, but consider the instructions as a whole. You are not to be concerned about the wisdom of any rule of law stated by me. You must follow and apply the law.

The lawyers have referred to some of the governing rules of law in their arguments. If there is any difference between the law stated by the lawyers and as stated in these instructions, you are governed by my instructions.

Nothing I say in these instructions indicates that I have any opinion about the facts. You, not I, have the duty to determine the facts.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

Court's Final Jury Instruction

This case should be considered and decided by you as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law and are to be treated as equals.

Court's Final Jury Instruction

You should consider and decide this case as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. A corporation is entitled to the same fair trial as a private individual. All persons, including corporations and other organizations, stand equal before the law, and are to be treated as equals.

Court's Final Jury Instruction

Although there are two plaintiffs in this action, it does not follow from that fact alone that if one plaintiff is entitled to recover, both are entitled to recover. The defendant is entitled to a fair consideration as to each plaintiff, just as each plaintiff is entitled to a fair consideration of that plaintiff's claim against the defendant. Unless otherwise stated, all instructions I give you govern the case as to each plaintiff.

Court's Final Jury Instruction

Although there is more than one defendant in this action, it does not follow from that fact alone that if one defendant is liable to the plaintiff, all defendants are liable. Each defendant is entitled to a fair consideration of the evidence. Neither defendant is to be prejudiced should you find against the other. Unless otherwise stated, all instructions I give you govern the case as to each defendant.

Court's Final Jury Instruction

A corporation may act only through natural persons as its agents or employees. In general, any agents or employees of a corporation may bind the corporation by their acts made while acting within the scope of their authority delegated to them by the corporation or within the scope of their duties as employees of the corporation.

Court's Final Jury Instruction

Unless you are otherwise instructed, the evidence in the case consists of the sworn testimony of the witnesses, all exhibits received in evidence regardless of who may have produced them, all facts and events that may have been admitted or stipulated to and all facts and events that may have been judicially noticed.

Statements and arguments by the lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statement, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. However, when the lawyers on both sides stipulate or agree on the existence of a fact, you must, unless otherwise instructed, accept the stipulation and regard that fact as proved.

Any evidence to which I have sustained an objection and evidence that I have ordered stricken must be entirely disregarded.

You must disregard anything you may have seen or heard when court was not in session even if what you saw or heard was done or said by one of the parties or by one of the

witnesses.

Court's Final Jury Instruction

The law permits me to comment to you on the evidence in this case. If I have made any such comments, or if you think that I have made any such comments, they are only an expression of my opinion as to the facts. You may disregard my comments entirely, since you as jurors are the sole judges of the facts and are not bound by my comments or opinions.

Court's Final Jury Instruction

If during the trial a lawyer asked a witness a question that contained an assertion of fact, you may not consider the assertion as evidence of that fact. The lawyer's questions and statements are not evidence.

Court's Final Jury Instruction

Plaintiffs _____ have in this case the burden of proving to you every essential element of each of their claims by a preponderance of the evidence. If they should fail to establish any essential element of a claim by a preponderance of the evidence, then you should find in favor of the Defendants, _____, as to that claim.

"Establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence as, when considered and compared with the evidence opposed to it, has more convincing force, and produces in your minds belief that what is sought to be proved is more likely true than not true. This standard does not require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard that applies in criminal cases. It does not apply in civil cases such as this.

Court's Final Jury Instruction

"Clear and convincing evidence" is evidence that produces in your mind a firm belief or conviction as to the matter at issue. Clear and convincing evidence involves a greater degree of persuasion than is necessary to meet the preponderance of the evidence standard. This standard does not require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

Court's Final Jury Instruction

When I instruct you that a party has the burden of proof on any proposition, or use the expression "if you find," or "if you decide," I mean that you must be persuaded, considering all the evidence in the case that the proposition is more probably true than not true.

Court's Final Jury Instruction

Direct evidence means evidence that directly proves a fact, without an inference, and which in itself, if true, conclusively establishes that fact.

Circumstantial evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts.

It is not necessary that facts be proved by direct evidence. Both direct evidence and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any greater weight than the other.

Court's Final Jury Instruction

You are to consider only the evidence in this case. However, you are not limited to the statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You may draw from the facts that you find have been proved such reasonable inferences as seem justified in light of your experience.

"Inferences" are deductions or conclusions that reason and common sense lead you to draw from facts established by the evidence in the case.

Court's Final Jury Instruction

The _____ language was used during this trial. Since an interpreter has been used, you are to consider only that evidence provided through the official court interpreter. Although some of you may know the non-English language used, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English interpretation. You must ignore any different meaning of the non-English words.

Court's Final Jury Instruction

Unless and until outweighed by evidence to the contrary, you may find that official duty has been regularly performed, that private transactions have been fair and regular, that the ordinary course of business or employment has been followed, that things have happened according to the ordinary course of nature and the ordinary habits of life, and that the law has been obeyed.

Court's Final Jury Instruction

Where it is the duty of a lower or subordinate official to report to the official's superior, or where it is the duty of a superior official to report or give information to a lower or subordinate official, you may find that this official duty was regularly performed, in the absence of evidence in the case leading you to a different conclusion.

Court's Final Jury Instruction

You may find that a state of affairs, once proved to exist, continues as long as is usual with things of that nature, in the absence of evidence in the case leading you to a different conclusion.

Court's Final Jury Instruction

The means of knowledge are ordinarily the equivalent in law to knowledge. If it appears from the evidence in the case that a person had information that would lead a reasonably prudent person to make inquiry through which that person would surely learn the facts, then this person may be found to have had actual knowledge of those facts, the same as if that person had made such inquiry and had actually learned such facts.

That is to say, the law charges a person with notice and knowledge of whatever that person would have learned, on making such inquiry as it would have been reasonable to expect the person to make under the circumstances.

Knowledge or notice may also be established by circumstantial evidence. If it appears that a certain condition has existed for a substantial period of time, and that the person had regular opportunities to observe the condition, then you may draw the inference that the person had knowledge of the condition.

Court's Final Jury Instruction

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists for "expert witnesses." An expert witness is a person who, by education and experience has become expert in some art, science, profession, or calling. Expert witnesses may state their opinions as to matters in which they profess to be expert, and may also state their reasons for their opinions.

You should consider each expert opinion received in evidence in this case, and give it such weight as you think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

Court's Final Jury Instruction

Certain charts and summaries have been shown to you in order to help explain facts disclosed by books, records, and other documents that are in evidence in the case. These charts or summaries are not themselves evidence or proof of any facts.

In other words, the charts or summaries are used only as a matter of convenience. To the extent that you find they are not truthful or correct summaries of facts or figures shown by the evidence in the case, you are to disregard them.

Court's Final Jury Instruction

The weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

You are not bound to decide any issue of fact in accordance with the testimony of any number of witnesses that does not produce in your minds belief in the likelihood of truth, as against the testimony of a lesser number of witnesses or other evidence producing such belief of truth in your minds.

The test is not which side brings the greater number of witnesses or takes the most time to present its evidence, but which witnesses and which evidence appeal to your minds as being most accurate and otherwise trustworthy.

Court's Final Jury Instruction

Plaintiff _____ has introduced into evidence certain "requests for admission," identified as "Plaintiff's Exhibit ____." These are deemed to be admitted by defendant _____ because defendant had the opportunity to deny or challenge them and did not do so. You are to take the facts stated in Plaintiff's Exhibit _____ as true for purposes of this case.

Court's Final Jury Instruction

Plaintiff _____ has introduced in evidence certain "requests for admission" identified as Plaintiff's Exhibit _____. These were presented to defendant _____, who made no response. Under the governing procedural rules, the facts set out in these requests are deemed admitted unless a response is made. You are therefore to take the facts stated in Plaintiff's Exhibit _____ as true for purposes of this case.

Court's Final Jury Instruction

Each party has introduced into evidence certain interrogatories--that is, questions together with answers signed and sworn to by the other party. A party is bound by its sworn answers.

By introducing an opposing party's answers to interrogatories, that party does not bind itself to those answers. The introducing party may challenge the opposing party's answers in whole or in part or may offer contrary evidence.

Court's Final Jury Instruction

Do not consider one party's [*answers to interrogatories*]
[*written response to request for admission*] [*admission of*
facts through failure to respond to a request] as evidence
against any other defendant.

Court's Final Jury Instruction

In deciding the facts, you may have to decide which testimony to believe and which testimony to disbelieve. You may believe everything a witness says, part of it, or none of it. In considering the testimony of any witness, you may take into account many factors, including the witness' opportunity and ability to see or hear or know the things the witness testified about; the quality of the witness' memory; the witness' appearance and manner while testifying; the witness' interest in the outcome of the case; any bias or prejudice the witness may have; other evidence that may have contradicted the witness' testimony; and the reasonableness of the witness' testimony in light of all the evidence. The weight of the evidence does not necessarily depend upon the number of witnesses who testify.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses may or may not cause you to discredit such testimony. Two or more persons seeing an event may see or hear it differently.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from

innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, that you may think it deserves. In short, you may accept or reject the testimony of any witness, in whole or in part.

In addition, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

In weighing the testimony to determine what or whom you will believe, you should use your own knowledge, experience and common sense gained from day to day living. You should give the greatest weight to that evidence which convinces you most strongly of its truthfulness.

Court's Final Jury Instruction

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something that is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness' other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Court's Final Jury Instruction

Some testimony was presented to you by way of a videotape deposition. This evidence is to be considered in the same light and subject to the same tests that are applied to testimony of other witnesses.

Court's Final Jury Instruction

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

Court's Final Jury Instruction

A child is not disqualified from being a witness simply because of the child's youth. As with all other witnesses, you are the sole judge of the credibility of a child who testifies at this trial. You may consider not only age, but demeanor while testifying, the capacity to observe facts and to recall them, the ability to understand questions asked the child, and the child's ability to answer them intelligently.

You should decide whether the child impresses you as having an accurate memory and recollection, whether the child understands the event or occurrence in question, whether the child impresses you as a truthful individual, any other facts and circumstances that impress you as a truthful person, and any other facts and circumstances that impress you as important or significant in determining the child's credibility. On the basis of your consideration, you may give the child's testimony such weight, if any, that you feel it deserves.

Court's Final Jury Instruction

Plaintiff _____ claims damages for personal injuries alleged to have been suffered as a result of defendant _____'s negligence.

"Negligence" is the doing of something a reasonably prudent person would not do, or the failure to do something a reasonably prudent person would do, under the same or similar circumstances. In other words, negligence is the failure to use ordinary care under the circumstances.

"Ordinary care" is the care reasonably prudent persons exercise in the management of their own affairs in order to avoid injury to themselves or their property, or to avoid injury to persons or the property of others.

Court's Final Jury Instruction _____

To prove the essential elements of plaintiff _____'s claim, the burden is on plaintiff _____ to establish by a preponderance of the evidence the following facts:

First, that defendant _____ was negligent in one or more of the particulars alleged; and

Second, that defendant _____'s negligence was a proximate cause of some injury and consequent damage sustained by plaintiff _____.

Court's Final Jury Instruction

For the purpose of this proceeding only, defendant _____ has admitted legal liability for any injury and damages plaintiff _____ may have suffered as a proximate result of the accident in question. In view of that admission, the only issues remaining for you to determine are:

First: What injury to plaintiff _____, if any, was proximately caused by the accident; and

Second: The amount of damages, if any, plaintiff _____ is entitled to recover.

An admission of legal liability should not bias you in favor of either party, prejudice you against either party, or influence you in any way in determining the issues submitted to you for decision.

Court's Final Jury Instruction

Since a corporation can act only through its officers, or employees, or other agents, the burden is on the plaintiff _____ to establish by a preponderance of the evidence that the negligence of one or more officers, or employees, or other agents, of the defendant _____ was a proximate cause of any injuries and consequent damages sustained by the plaintiff _____.

Any negligent act or omission of an officer, or employee, or other agent, of a corporation, in the performance of that person's duties, is held in law to be the corporation's negligence.

Court's Final Jury Instruction

An injury or damage is proximately caused by an act or a failure to act whenever it appears from the evidence that the act or failure to act played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

The law does not necessarily recognize only one proximate cause of an injury or damage, consisting of only one factor or thing, or the conduct of only one person. On the contrary, many factors or things, or the conduct of two or more persons, may operate at the same time, either independently or together, to cause injury or damage; and in such a case, each may be a proximate cause.

Court's Final Jury Instruction

In addition to denying that any negligence of defendant _____ proximately caused any injury or damage to plaintiff _____, defendant _____ alleges, as a further defense, that some contributory negligence on the part of plaintiff _____ was a proximate cause of any injuries and consequent damages plaintiff _____ may have sustained. Contributory negligence is fault on the part of a person injured, which cooperates in some degree with the negligence of another, and so helps to bring about the injury.

By the defense of contributory negligence, defendant _____, in effect, alleges that, even though defendant may have committed some negligent act or omission which was one of the proximate causes, plaintiff _____, by plaintiff's own failure to use ordinary care under the circumstances for plaintiff's own safety, at the time and place in question, also contributed one of the proximate causes of any injuries and damages plaintiff may have suffered.

The burden is on defendant _____ to establish by a preponderance of the evidence that plaintiff _____ was also at fault, and that such fault contributed one of the proximate

causes of any injuries and consequent damages plaintiff
_____ may have sustained.

Court's Final Jury Instruction

If you find for plaintiff _____, you should compensate [him/her] for any aggravation of an existing disease or physical defect [or *activation of any such latent condition,*] resulting from such injury. If you find that there was such an aggravation, you should determine, if you can, what portion of [his/her] condition resulted from the aggravation and make an award of damages in your verdict only for the aggravation.

However, if you cannot make that determination or if it cannot be said that [his/her] condition would have existed apart from the injury, you should consider and make an award of damages in your verdict for the entire condition.

Court's Final Jury Instruction

Plaintiff _____ alleges that by reason of plaintiff's claimed injuries proximately resulting from the accident in this case, plaintiff has sustained damages.

If you find in favor of plaintiff _____, then you should award plaintiff such sum as you believe will fairly and justly compensate plaintiff for any damages you believe plaintiff sustained [*and is reasonably certain to sustain in the future*] as a proximate result of the event mentioned in the evidence.

You should consider only the following elements of damage, to the extent that you find them proved by a preponderance of the evidence:

1. The nature and extent of the injuries and the effect of the injuries on the plaintiff _____'s ability to function as a whole person.
2. Whether the injuries are temporary or permanent.
3. The physical pain and mental suffering experienced, and reasonably certain to be experienced in the future, due to the injuries.
4. The value of lost time.

5. The value of loss or impairment of earning capacity.
6. The reasonable expense of necessary medical care, treatment, and services incurred and the reasonable expense of future medical care, treatment, and services.
7. The aggravation of a previous injury or condition.
8. The fair market value of the damage to the vehicle owned by _____ and _____.

Court's Final Jury Instruction

The standard table of mortality that the court has judicially noticed and received in evidence in this case may be considered by you in determining how long the claimant may be expected to live. According to the table of mortality, the life expectancy in this country of a male person 18 years of age is ____ years.

Life expectancy, as shown by a mortality table, is merely an estimate of the probable average remaining length of life of all persons in the United States of a given age and sex. That estimate is based upon a limited record of experience. The inference that may reasonably be drawn from life expectancy as shown by the table applies only to one who has the average health and exposure to danger of people of that age and sex.

In determining the reasonably certain life expectancy of plaintiff _____, you should consider, in addition to what is shown by the mortality table, all other facts and circumstances in evidence in the case bearing upon the life expectancy of plaintiff _____, including his occupation, habits, past health record and present state of health.

When considering life expectancy, in determining any

reasonably certain future damage, you will bear in mind, of course, the distinction between entire-life expectancy and work-life expectancy.

Those elements of damage that are related to future income should be measured only by plaintiff _____'s remaining work life expectancy, not his entire life expectancy.

Court's Final Jury Instruction

In the event that you determine to award plaintiff
_____ a sum of money, you are instructed that the award is
not subject to any deductions for federal or state income taxes.

Court's Final Jury Instruction

If you find for the plaintiff _____, you must not take into account any consideration of attorney fees or court costs in deciding the amount of plaintiff _____'s damages.

Court's Final Jury Instruction

You are not to award damages for any injury or condition from which plaintiff _____ may have suffered, or may now be suffering, unless it has been established by a preponderance of the evidence in the case that such injury or condition was proximately caused by the accident in question.

Court's Final Jury Instruction

The amount of damages awarded, if any, must be reasonable. If you should find that plaintiff _____ is entitled to a verdict, you may award [him/her] only such damages as will reasonably compensate [him/her] for such injury and damage as you find, from a preponderance of the evidence in the case, that [he/she] has sustained as a proximate result of the accident.

You are not permitted to award speculative damages. So, you are not to include in any verdict compensation for any prospective loss that, although possible, is not reasonably certain to occur in the future.

Court's Final Jury Instruction

The fact that I have instructed you as to the proper measure of damages should not be considered as indicating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance only in the event you should find in favor of the plaintiff from a preponderance of the evidence in the case in accordance with the other instructions.

Court's Final Jury Instruction

The following rules apply while you are deliberating and returning your verdict:

First, when you go to the jury room, you must select a foreperson. The foreperson will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room and try to reach agreement.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of the other jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not make a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your

deliberations, you may send a note to me through the Deputy Marshal or Courtroom Deputy Clerk Sue Brown, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. You should not tell anyone--including me--your vote totals.

It is possible that such a note from you to me cannot be answered by me according to the rules of law. Therefore, you should attempt to limit such notes to as few as possible or to none at all.

Fourth, your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be--that is entirely for you to decide.

Finally, the verdict form is the written notice of the decision that you reach in this case. It will be provided to you by the court. You will take this form to the jury room, and when each of you agrees on the verdict[s], your foreperson will fill in the form, sign and date it, and advise the Deputy Marshal or Courtroom Deputy Clerk that you are ready to return to the courtroom.

Court's Final Jury Instruction

Nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any suggestion or hint as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

Court's Final Jury Instruction

You will hear from the oath about to be taken by the Courtroom Deputy Clerk and Deputy Marshal that they, too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

You are not to reveal to any person--not even to me--how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

Court's Final Jury Instruction

The verdict must represent the considered judgment of each of you. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without disregard of individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges--judges of the facts. Your sole interest is to seek the truth from the evidence in the case.